

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1272 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA sd/-
and
Hon'ble MR.JUSTICE N.G.NANDI sd/-

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF VITHALBHAI DAWALBHAI

Versus

ADDL SPL LAND ACQUISITION OFFICER

Appearance:

1. First Appeal No. 1272 of 1987
MR RAMESH M SHAH for Petitioner No. 1
MR RN SHAH for Petitioners No. 1/1-1/9
Ms.SP SEN, A.G.P. for Respondent No. 1
MR PJ VYAS for Respondent No. 2
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CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE N.G.NANDI

Date of decision: 16/01/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. In all 14 compensation cases i.e. Compensation Case No.4 of 1982 and Compensation Case Nos.1 to 13 of 1983 came to be decided by a common judgment and Award dated 26.3.1984 passed by the learned Judge of the City Civil Court, Court No.16, Ahmedabad, whereby all the References were partly allowed and it was ordered that the opponents do pay to the claimants, additional compensation, including the Solatium at the rate of 15 per cent and interest on such amount at 4-1/2 per cent from the date of possession as detailed in chart shown in the Judgment itself. The opponents were also ordered to pay interest on all those additional amount of compensation at 4-1/2 per cent from the date of possession.

2. Out of the above 14 compensation cases the Appeal is filed only in one case i.e. Compensation Case No.1 of 1983 by the Legal heirs of deceased Vithalbhai Dawalbhai Patel, original claimant. It appears that others were satisfied with the Award passed by the learned Judge and therefore the same is not challenged by them. Thus, we are called upon to decide the validity and legality of the impugned Award passed by the learned Judge only in Compensation Case No.1 of 1983.

3. Learned Counsel Shri R.N.Shah for the appellants vehemently submitted that the learned Judge committed an error in partly allowing the Reference and awarding additional sum of Rs.5/- per sq.mtr. He submitted that while doing so the learned Judge has completely ignored the other sale instances cited and relied upon by the claimants. He submitted that the land in question which was acquired by the Acquiring Body was fully developed as it was in the Town Planning Scheme of Ahmedabad Municipal Corporation and it was in the limit of the Municipal Corporation. He, therefore, submitted that this Appeal should be allowed on the point of quantum.

4. Shri Shah then submitted that in any case the learned Judge committed a grave error in awarding only 15 per cent solatium with 4-1/2 per cent interest on it. He submitted that the learned Judge has completely over-looked the amendment made in Section 23(2) of the Land Acquisition Act (for short "the Act") under which the claimants were entitled for 30 per cent solatium and not 15 per cent with interest at the rate of 9 per cent p.a. and not 4-1/2 per cent p.a.

5. Learned A.G.P. Shri Sen for the respondents, however, submitted that the learned Judge has not committed any error in awarding additional sum of Rs.5/- per sq.mtr. Therefore, this Court should not interfere with such Award. But in view of the Supreme Court Judgment in case of Bhagsinh, reported in AIR 1985 SC 1576 and subsequent Judgment of the Constitutional Bench in the case reported in 1994 (6) J.T. 182 Shri Sen was hardly in a position to oppose the submissions made by Shri Shah that the claimants were entitled for 30 per cent solatium and not 15 per cent awarded by the learned Judge with 9 per cent interest on it.

6. From the evidence led by both the parties and the reasons assigned by the learned Judge it clearly appears to us that the lands under acquisition were in reservation first in Green Belt and then it was reserved for the Gujarat Housing Board (G.H.B.). The sale instances which were tried to be relied upon by the claimant could not be compared in estimating the correct market value of the lands which were acquired by the Authority. Two sale instances which were tried to be relied upon were considerably at the lower rate. Considering all the material and the evidence on record the learned Judge has come to the conclusion that the claimants were entitled to additional sum of Rs.10/-, but in case of present claimant he has come to the conclusion that they are entitled to Rs.5/- per sq.mtrs. The submission made by Shri Shah that the lands which were acquired were fast developing would not be of any assistance in view of the discussion made by the learned Judge in his Judgment. Having carefully gone through the reasons assigned by the learned Judge for partly allowing the Reference we are of the considered opinion that the learned Judge has taken a just view in the matter which does not call for any interference of this Court in this Appeal.

7. Before parting, we must state that except the present appellants, the other claimants of 13 Compensation Cases have accepted the Award passed by the learned Judge. Be that as it may. When we are satisfied that no error is committed by the learned Judge for passing the Award on the point of additional compensation then we will have to dismiss the Appeal. However, there is a lot of substance in the submission made by Shri Shah regarding grant of Solatium at the rate of 15 per cent with 4-1/2 per cent interest on it.

8. Initially u/s.23(2) of the Act the solatium was

to be paid at the rate of 15 per cent, but under the Land Acquisition (Amendment) Act, 1984 it was raised to 30 per cent. From the provisions of the Land Acquisition (Amendment) Act, 1984 it clearly appears that every proceeding for the acquisition of the land under the Principal Act pending on the 30th April 1982 in which no Award has been made by the Collector before that date will be applicable. In the instance case the learned Judge passed the Award on 26.3.1984, at that time the proceedings were pending therefore he ought not to have awarded 15 per cent solatium but he has to award 30 per cent solatium with 9 per cent interest instead of 4-1/2 per cent.

9. In view of the above, this Appeal has to be partly allowed on the point of solatium with interest. Accordingly the Award passed by the learned Judge is modified qua the present Appellants only in the compensation Case No.1/83 and it is ordered that on the additional amount of Rs.5/- per sq.mtr. the claimant of compensation Case No.1/83 would be entitled to additional solatium at the rate of 15 per cent in addition to the solatium granted by the learned Judge that rate of 15 per cent in view of the Supreme Court Judgment reported in Sunder v/s. Union of India in Civil Appeal No.6271 of 1998, decided on 19.9.2001. Thus, in all the appellants claimants would be entitled for solatium at the rate of 30 per cent with 9 per cent interest on it instead of 4-1/2 per cent awarded by the learned Judge.

10. Similarly the opponents will also have to pay interest on the additional amount of compensation awarded by the learned Judge at the rate of 9 per cent instead of 4-1/2 per cent from the date of possession as provided u/s.28(A) of the Act.

Accordingly, this Appeal is partly allowed to the aforesaid extent only. However, there shall be no order as to costs.

sd/-

(B.J.Shethna, J.)

Date : January 16, 2002 sd/-

(N. G. Nandi, J.)

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